

OCT - 2 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington D.C., 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Local Competition
 Provisions of the Telecommunications Act
 of 1996

Interconnection between Local Exchange
 Carriers and Commercial Mobile Radio
 Service Providers

CC Docket 96-98

CC Docket 95-185

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of the Sprint LECs and Sprint Communications Company L.P., submits its Comments in response to the Commission's notice in the Third Order on Reconsideration and Further Notice of Proposed Rule Making ("Third Order and FNPRM") released on August 18, 1997, in the above-referenced docket.¹ In the Third Order and FNPRM, the Commission seeks comment as to whether requesting carriers may use shared transport facilities, in conjunction with unbundled switching,² to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service.³ Moreover, the Commission seeks comment on whether requesting carriers may use dedicated transport facilities to originate or terminate interexchange traffic to customers to whom the requesting

¹ In the Matter of Implementation of The Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) ("Local Competition Order"), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295, Adopted: August 18, 1997, Released: August 18, 1997, ("Third Order and NPRM") further reconsideration pending, affirmed in part and vacated in part sub. nom. *Comptel v. FCC* 117 F.3d 1068 (8th Circuit 1997) ("Comptel") affirmed in part and vacated in part sub. nom. *Iowa Utilities Board v. FCC* and consolidated cases, No. 96-3321 et. al., 1997 WL 403401 (8th Circuit) ("Iowa Utilities Board").

² Sprint assumes that the reference in ¶61 to unbundled switching is meant to refer specifically to tandem switching, rather than local switching, since the local switching element can be purchased only by an end user's local carrier. See p. 4, *infra*.

³ Third Order and FNPRM at ¶3 and ¶61.

carrier does not provide local exchange service.⁴

I. Introduction

Although clearly within the purview of the Commission and appropriate under the Telecommunications Act of 1996 ("Act"), Sprint submits that, as a matter of policy, the Commission should not permit the use of either shared transport facilities or dedicated transport facilities, whether in conjunction with unbundled tandem switching or not, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service unless and until ILECs are provided -- through higher subscriber line charges, additional universal service support or local rate rebalancing -- appropriate alternative cost recovery mechanisms to recover the access transport revenues lost from doing so. To do otherwise would short-circuit the transition to cost-based access rates set out in the Commission's Access Charge Reform Order⁵, as well as upset the delicate balance the Commission has established in its trilogy of key proceedings implementing the local competition provisions of the Act -- its Access Reform proceeding, its Local Competition/Interconnection proceeding and, especially, its Universal Service Reform proceeding.

II. If the Commission Were to Immediately Adopt the Proposed Treatment of Unbundled Switching and Transport in the FNPRM, its Access Charge Reform Policy Would Be Jeopardized

In the Third Order and FNPRM, the Commission set forth significant detail regarding the use of transport as an unbundled element by requesting carriers. The Commission found that the Local Competition Order requires incumbent LECs to provide competing carriers with access to the same transport facilities that incumbent LECs use to carry their own traffic for transport

⁴ Id. at ¶3.

⁵ In the Matter of the Access Charge Reform, CC Docket No. 96-262, First Report and Order, Adopted: May 7, 1997, Released: May 16, 1997 ("Access Charge Reform Order").

between the end office switch and the tandem switch.⁶ The Commission also clarified that incumbent LECs are required to provide requesting carriers with access to shared transport for all transmission facilities connecting incumbent LECs' switches -- that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches.⁷ The Commission also clarified that incumbent LECs are only required to provide dedicated transport and not shared transport between their switches or their serving wire centers and requesting carriers' switches, for such facilities are dedicated to the requesting carrier.⁸

Section 251(c)(3) expressly that any requesting telecommunications carrier may seek access to unbundled elements to provide a "telecommunications service," and clearly, interexchange services are telecommunications services. The Commission has been very careful, however, in articulating a policy with respect to the provision of services by an IXC utilizing unbundled network elements as opposed to access services. In the Local Competition Order, the Commission concluded that section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers. Although the Commission concluded in the Local Competition Order that requesting telecommunications carriers are permitted under the Act to purchase unbundled elements for the purpose of providing exchange access, it clarified that a carrier must, at least with respect to unbundled loops, provide to an end user all of the services that the end user requests.

⁶ Third Order and FNPRM at ¶25.

⁷ Id. at ¶26.

⁸ Id. at ¶28.

The Commission further clarified this interpretation in the Order on Reconsideration:

We thus make clear that, as a practical matter, a carrier that purchases an unbundled switching element will not be able to provide solely interexchange service or solely access service to an interexchange carrier. A requesting carrier that purchases an unbundled local switching element for an end user may not use that switching element to provide interexchange service to end users for whom that requesting carrier does not also provide local exchange service. Using unbundled switching elements in such a manner would be inconsistent with our statement in the First Report and Order that "a competing provider orders the unbundled basic switching element for a particular customer line"⁹

This interpretation by the Commission is consistent with its findings that an IXC is likely to operate as a CLEC and thus should be entitled to take unbundled elements to provision access service for itself or others. This finding is also consistent with interpretations given by the Commission to other sections of the Act.

Although clearly within the purview of the Commission and appropriate under the Act, Sprint submits that, the Commission should not permit the use of either shared transport facilities or dedicated transport facilities, whether in conjunction with unbundled tandem switching or not, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service, unless the Commission affords the ILECs a reasonable opportunity to make provisions for alternative recovery (e.g., through rate rebalancing) of subsidies that may have been embedded in transport access charges. Where such subsidies have been removed, there is no policy reason to preclude IXCs from purchasing transport (and tandem switching) as UNEs. However, absent such an opportunity, the Commission's plan for transitioning access charges to cost will be undermined.

In its Access Charge Reform Order, the Commission adopted a comprehensive approach for the treatment of access charges. The Commission established a time frame for further review

⁹ Order on Reconsideration at ¶13.

of access charges, indicating that this policy will be revisited if sufficient progress towards the establishment of cost based rates has not been achieved. To short circuit this approach without some alternative means of cost recovery, such as rate rebalancing, would destroy the delicate balance the Commission has established to minimize the economic dislocations created by the move from a monopoly to a competitive local exchange industry. The Commission has recognized that the Act suggests that the current access charge regime be reformed by a process that eliminates subsidies and encourages competition, but not prematurely abandoned without consideration given to the significant consequences of such an action. As will be discussed further, the Eighth Circuit has upheld such an approach.

The Commission has chosen to effect an orderly transition to a competitive environment, especially with respect to the imposition of access charges. The Commission has chosen to allow the competitive effects of the Act to determine the immediate impact on the pricing of access charges. The Commission has found that neither in the Act nor its legislative history did Congress state that all forms of implicit universal service support shall be made explicit by May 8, 1997, but rather that explicit support should be pursued to the extent possible. The Commission established a time frame to review the process and to revisit as circumstances warrant:

We are confident that the pro-competitive regime created by the 1996 Act and implemented in the Local Competition Order and numerous state decisions will generate workable competition over the next several years in many cases, and we would then expect that access price levels to be driven to competitive levels. We also recognize, however, that competition may develop at different rates in different places and that some services may prove resistant to competition. Where competition has not emerged, we reserve the right to adjust rates in the future to bring them into line with forward-looking costs. To assist us in that effort, we will require price cap LECs to submit forward-looking cost studies of their services no later than February 8, 2001, and sooner if we determine that competition is not developing sufficiently for the market-based approach to work. We anticipate that the tools needed to complete these cost studies will be available soon, well before this deadline. Indeed, our Universal Service Order requires comparable cost

models to be ready by 1998. We will then review competitive conditions and the submitted cost studies.¹⁰

The Court of Appeals has upheld this approach in the Comptel¹¹ decision. Sprint is hopeful that the advent of competition in the local exchange market, however slow, will confirm the accuracy of the Commission's observation. Eventually, such a transition must prevail. The high level of access charges prevailing today places a burden on IXCs and their customers. At the same time, it places business risks on ILECs - - from facilities-based competitors or competitors that purchase unbundled network elements in the provision of access services on a competitive basis. Should this competition for access services not develop, the Commission established a time frame for review of its actions and to implement appropriate corrective measures.

In establishing the time frame for access reform, the Commission recognized that the need for both access reform and universal service reform must be balanced against the need to allow ILECs some meaningful opportunity to rebalance their rates or take other mitigating steps in response the prospective emergence of local competition. Until now, local residential services have been priced on the basis of subsidies, rather than costs. ILECs were expected to use other sources of revenue, such as interstate and intrastate access charges, intraLATA toll charges, charges for optional service features, and local business services, in order to keep residential rates low.

The Commission noted that the Access Charge Reform Order establishes a process that will eliminate some implicit subsidies quickly and others more gradually. In so doing the Commission established a policy that allowed for an orderly transition to cost based rates without undue economic penalties:

¹⁰ Access Charge Reform Order at ¶48.

¹¹ 117 F.3rd 1068 (8th Circuit 1997)

[W]e are concerned that any attempt to move immediately to competitive prices for the remaining services would require dramatic cuts in access charges for some carriers. Such an action could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business operations, even when new explicit universal support mechanisms are taken into account. Moreover, lacking the tools for making accurate prescriptions, precipitous action could lead to significant errors in the level of access charge reductions necessary to reach competitive levels. That would further impede the development of competition in the local markets and disrupt existing services. Consequently, we strongly prefer to rely on the competitive pressures unleashed by the 1996 Act to make the necessary reductions.¹²

The Commission has recognized that this past approach to ratemaking for local service is simply unsustainable, both as a matter of economics and as a matter of law. Nevertheless, other regulatory authorities must also recognize the inevitability of this conclusion and have a meaningful opportunity to take the necessary steps to set corrective measures in motion.

In the Comptel decision, the Eighth Circuit recognized the authority of the Commission to adopt changes in an orderly and rational fashion. Where the immediate implementation of a Section 251 requirement may have significant, immediate adverse effects on the very important statutory goal of preserving the provision of universal service, the Commission may delay implementation "in order to effectuate another part of the Act."¹³ The Court went on to find with respect to the interim access rates established by the Commission that it was not contrary to the Act to institute access charges with a fixed expiration date, even though such charges on their face appear to violate the statute, in order to effectuate another part of the Act.¹⁴ Sprint submits that the Commission should exercise similar discretion here as well. To the extent interstate and intrastate access charges for transport continue to be used to support universal service, the ILECs

¹² Access Charge Reform Order at ¶46.

¹³ Comptel at 1074.

¹⁴ Comptel at 1075.

access charges for those elements should be not undercut through the use of transport and tandem switching UNEs by IXC's without either adhering to the transition provided for in the Access Charge Reform Order, or providing some other appropriate opportunity for ILEC cost recovery.

Respectfully submitted,

SPRINT CORPORATION

By: Jay C. Keithley
Jay C. Keithley
H. Richard Juhnke
1850 M Street, N.W.
Suite 1100
Washington, DC 20036

Joseph P. Cowin
P.O. Box 11315
Kansas City, MO 64112
(913) 624-8680

Its Attorneys

October 2, 1997

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 2nd day of October, 1997, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.



Melinda L. Mills

* Indicates Hand Delivery

Mark J. Tauber
Kecia Boney
Mark J. O'Connor
Piper & Marbury, LLP
1200 19th Street, NW
Washington, DC 20036
Counsel for Omnipoint Communications

Betty D. Montgomery
Attorney General of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Judith St. Ledger-Roty
Reed Smith Shaw & McClay
1301 K Street, NW
Suite 1100 East Tower
Washington, DC 20005
Counsel for Paging Network

Lee A. Rau
Reed Smith Shaw & McClay
8251 Greensboro Drive
Suite 1100
McLean, VA 22102
Counsel for Paging Network

Maureen A. Scott
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Daniel E. Smith
Gurman, Blask & Freedman
1400 16th Street, NW
Suite 500
Washington, DC 20036
Counsel for ProNet, Inc.

Greg P. Mackay
Perkins Coie
411-108th Avenue, NE, Suite 1800
Bellevue, WA 98004-5584
Counsel for Puget Sound Power & Light

Charles C. Hunter
Hunter & Mow, PC
1620 I Street, NW
Suite 701
Washington, DC 20006
Counsel for Telecommunications Resellers
Assoc.

James A. Hirschfield, Jr.
President
Summit Communications, Inc.
3633 136th Place SE
Suite 107
Bellevue, WA 98006-4600

Aaron I Fleischman
Fleischman and Walsh, LLP
1400 16th Street, NW
Washington, DC 20036
Counsel for Time Warner Communications
Holdings, Inc.

Paul B. Jones
Time Warner Communications Holdings, Inc.
300 Stamford Place
Stamford, CT 06902

Charles H. Carrathers, III
Hunton & Williams
Riverfront Plaza, East Towers
951 East Byrd Street
Richmond, VA 23219-4074
Counsel for Virginia Power

Charles H. Kennedy
James A. Casey
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006
Counsel for Western Alliance

Dana Frix
Swidler & Berlin, Chtd.
3000 K Street, NW
Suite 300
Washington, DC 20007
Counsel for Winstar Communications, Inc.

Timothy R. Graham
Winstar Communications, Inc.
1146 19th Street, NW
Washington, DC 20036

Jeffrey L. Sheldon
Sean A. Stokes
UTC
1140 Connecticut Avenue, NW
Suite 1140
Washington, DC 20036

David L. Swanson
Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004

Richard J. Metzger
Emily M. Williams
Assoc. for Local Telecommunications Services
1200 19th Street, NW, Suite 560
Washington, DC 20036

David N. Porter
MFS Communications Company, Inc.
3000 K Street, NW, Suite 300
Washington, DC 20007

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin, Chtd
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for MFS Communications

J. Manning Lee
Teleport Communications Group, Inc.
One Teleport Drive, Suite 300
Staten Island, NY 10311

Mark E. Haddad
James P. Young
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006
Counsel for AT&T

Mark C. Rosenblum
AT&T
295 North Maple Avenue
Room 3245I1
Basking Ridge, NJ 07920

Mary L. Brown
MCI
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Thomas P. Hester
Ameritech
30 South Wacker Drive
Chicago, IL 60606

Antoinette Cook Bush
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, NW
Washington, DC 20005
Counsel for Ameritech

John M. Goodman
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

M. Robert Sutherland
BellSouth
1155 Peachtree Street, NE
Suite 1700
Atlanta, GA 30309-3610

Campbell L. Ayling
NYNEX
1111 Westchester Avenue
White Plains, NY 10604

Marlin D. Ard
Pacific Telesis Group
140 New Montgomery Street
Room 1530A, 15th Floor
San Francisco, CA 94105

R. Michael Senkowski
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Counsel for Pacific Telesis; GTE

James D. Ellis
SBC Communications, Inc.
175 E. Houston, Room 1254
San Antonio, TX 78205

Durwood Dupre
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Robert B. McKenna
US West
1020 19th Street, NW
Suite 700
Washington, DC 20036

Mary McKermott
USTA
1401 H Street, NW, Suite 600
Washington, DC 20005

David J. Gudino
GTE Service Corporation
1850 M Street, NW
Suite 1200
Washington, DC 20036

Jeffrey A. Froeschle
Florida Power
3201 34th Street South
PO Box 14042
St. Petersburg, FL 33733-4042

Alan R. Shark
American Mobile Telecommunications Assoc.
1150 18th Street, NW, Suite 250
Washington, DC 20036

Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, NW - 12th Floor
Washington, DC 20036
Counsel for American Mobile Telecom

Riley M Murphy
Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Brad E. Mutschelknaus
Kelley Drye & Warren
1200 19th Street, NW
Suite 500
Washington, DC 20036
Counsel for American Communications
Services, Inc.

Shirley S. Fujimoto
McDermott, Will & Emery
1850 K Street, NW
Suite 500
Washington, DC 20006
Counsel for Am. Electric Power Service
Corporation, et. al.

Carolina Power & Light Company
PO Box 1551
411 Fayetteville Street Mall
Raleigh, NC 27602

Michael Altschul
CTIA
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

Peter Arth, Jr.
People of the State of California, CA PUC
505 Van Ness Avenue
San Francisco, CA 94102

Richard M. Tettelbaum
Citizens Utility Company
Suite 500
1400 16th Street, NW
Washington, DC 20036

Paul Glish
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
Counsel for Continental Cablevision, et. al.

Frederick M. Joyce
Joyce & Jacobs, LLP
1019 19th Street, NW
14th Floor, PH-2
Washington, DC 20036
Counsel for Celpage, Inc.

Werner K. Hartenberger
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
Counsel for Cox Communications, Inc.

Mary L. Krayske
ConEdison
4 Irving Place
New York, NY 10003

Anthony M. Black
Bell Boyd & Lloyd
1615 L Street, NW, Suite 1200
Washington, DC 20036-5610
Counsel for DC PUC

John H. O'Neill, Jr.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037-1128
Counsel for Duquesne Light Co.; Delmarva
Power & Light Company; PSC New Mexico

Michael J. Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Michael A. Rump
Kansas City Power & Light Co.
1201 Walnut
PO Box 418679
Kansas City, MO 64141-9679

Kathy J. Shobert
General Communication, Inc.
901 15th Street, NW, Suite 900
Washington, DC 20005

Emily C. Hewitt
GSA
18th & F Streets, NW, Room 4002
Washington, DC 20405

Daniel L. Brenner
National Cable Television Assoc, Inc.
1724 Massachusetts Avenue, NW
Washington, DC 20036

Howard J. Symons
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
Counsel for National Cable Television
Assoc, Inc.

J. Scott Bonney
NextLink Communications, LLC
155 108th Street, NE
Bellevue, WA 98004

Daniel M. Waggoner
Davis Wright Tremaine
2600 Century Sq.
1501 Fourth Avenue
Seattle, WA 98101-1688
Counsel for NextLink

Stephen L. Goodman
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, NW
Suite 650, East Tower
Washington, DC 20005
Counsel for Northern Telecom, Inc.

John G. Lamb, Jr.
Northern Telecom, Inc.
2100 Lakeside Blvd.
Richardson, TX 75081-1599

Stephen E. Morgan
Ohio Edison Company
76 South Main Street
Akron, OH 44308

David C. Bergmann
Ohio Consumer's Counsel
77 South High Street, 15th Floor
Columbus, OH 43266-0550

Sarah D. Smith
Public Service Company of New Mexico
Alvarado Square, Mailstop 0806
Albuquerque, NM 87158

Robert J. Brill
New England Power Service Co.
25 Research Drive
Westboro, MA 01582
Counsel for MA Electric Co., et. al.

Regina Keeney, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW -- Rom 500
Washington, DC 20554

James D. Schlichting, Chief*
Competitive Pricing Division
Federal Communications Commission
1919 M Street, NW -- Room 518
Washington, DC 20554

ITS*
1919 M Street, NW -- Room 246
Washington, DC 20554

Janice Myles*
Federal Communications Commission
1919 M Street, NW - Room 544
Washington, DC 20554

David Sieradzki, Chief*
Legal Branch
Federal Communications Commission
1919 M Street, NW -- Room 518
Washington, DC 20554

Richard K. Welch*
Federal Communications Commission
1919 M Street, NW - Room 544
Washington, DC 20554

Steve Weingarten*
Federal Communications Commission
1919 M Street, NW -- Room 518
Washington, DC 20554

Lisa Gelb*
Federal Communications Commission
1919 M Street, NW - Room 544
Washington, DC 20554

Stuart Kupinsky*
Federal Communications Commission
1919 M Street, NW -- Room 544
Washington, DC 20554

Gloria Shambley* (3 copies)
Federal Communications Commission
2000 M Street, NW, Suite 210
Washington, DC 20554

* Indicates Hand Delivery